

# AVIATION SECURITY: CONSULTATION ON A STATUTORY AUTHORITY TO CARRY SCHEME THE GOVERNMENT RESPONSE



Home Office

April 2012



## BACKGROUND

1. Following the attempted terrorist attack over Detroit on 25 December 2009, two reviews of the UK's counter-terrorism watchlisting arrangements were conducted in January and March 2010. One of the conclusions of those reviews was that the UK should develop a 'no fly' capability to prevent those known to pose a terrorist threat from flying to or from the UK. This capability would provide additional protective security building on existing security and immigration powers and airport screening arrangements.
2. The Strategic Defence and Security Review published in October 2010 included a commitment "to make changes to pre-departure checks to identify better people who pose a terrorist threat and prevent them flying to or from the UK".
3. An important element of this policy is the proposal to introduce an Authority to Carry Scheme ("the Scheme") under s.124 of the Nationality, Immigration and Asylum Act 2002 which would confer a power under which carriers could be denied authority to carry specified foreign nationals to the UK. The Scheme would be brought into force through a Scheme document, with accompanying Regulations providing for a civil penalty regime.
4. Following its introduction, the Scheme would apply to air carriers that have been served with a Form IS72, which acts as the written notice requiring submission of passenger data to e-Borders. The Scheme would operate upon the transmission by carriers of advance passenger information to e-Borders, pre-departure to the UK, and the UK Border Agency notifying the carrier of any passenger in respect of whom authority to carry to the UK has been denied.
5. Initially the Scheme would operate manually, whereby UK Border Agency staff would contact a carrier only to convey decisions where authority to carry is denied. In the longer term more automation may be introduced enabling explicit authority to carry to be communicated automatically between border control systems and airlines systems at the airport, for a more efficient end-to-end process with manual processes retained to decide and confirm instances of denial of authority to carry.

## CONSULTATION EXERCISE

6. On 14 September 2011 the Home Office published a consultation paper inviting responses on proposals for the introduction of an Authority to Carry Scheme to prevent individuals who pose a terrorist threat from flying to the UK. A twelve-week consultation directed at the airline industry and other interested parties on proposals to implement such a Scheme ended on 6 December. The consultation document was sent to interested parties and published on the Home Office website.

## CONSULTATION RESPONSES

7. A total of 18 responses were received including three from representative groups with a total membership of 161 airlines. (The respondents are listed at Annex A.) All were supportive of the purpose of the Scheme to identify high risk individuals who pose a terrorist threat and prevent them from boarding an aircraft to the UK. 16 were supportive of the Scheme as proposed and two industry respondents expressed reservations about the proposed operation of the Scheme and changes to operating processes.
8. The development and impact of the proposals was the subject of pre-consultation and mid-consultation meetings held with industry representatives. (See Annex B.)
9. Key issues of concern were operational costs to airlines and time constraints inherent with a manual system to decide and communicate denial of authority to carry. However, when weighed against the probability of an individual being identified who would come within the scope of the proposed Scheme and the costs of a successful terror attack, the costs set out are not significant. The Government accepts the constraints of a manual scheme which is why we are working towards more interactive processes similar to those operated by other Governments.
10. Data on financial implications provided by respondents is reflected in the final Impact Assessment (at Annex C).

## RESPONSES TO QUESTIONS

### **Question 1: General comments on the purpose of the Scheme**

Responses: The majority of respondents were supportive of a Scheme if the purpose is to identify high risk individuals who present a terrorist threat and prevent them from boarding an aircraft. It was widely accepted that if the volume of passengers is as set out, a manual solution may be manageable in the short term.

### **Question 2: Conducting all pre-departure checks within e-Borders**

Responses: The majority of responses confirmed a preference for e-Borders and the use of a single window to minimise the operational impact on airlines.

### **Questions 3 & 4: Costs to airlines**

Responses: The general view was that costs to government were overestimated while costs to airlines had been underestimated: the IA did not include operational impacts (staff numbers, training costs, offloading of baggage) and the full cost of delays. In addition, costs were based on the assumption that the maximum delay would be 24 hours. Several airlines pointed out that from some destinations there is only 1 flight per week. Additional costings were provided by several respondents.

### **Questions 5 & 6: Benefits**

Responses: The majority of responses agreed that the main benefit is the reduction of the probability of a terrorist attack. A number of respondents assumed (incorrectly) benefit in airlines avoiding carrier's liability charges and removal costs for bringing inadequately documented arrivals.

It was pointed out by two airlines that the benefits of the Scheme would increase if applied to other immigration criteria.

### **Question 7: How to make an action of denial of ATC as effective as possible where Advance Passenger Information (API) is received at 30 mins before departure**

Responses: For practical purposes, it was suggested that the submission of incomplete data should be allowed with a further transmission of complete data when this becomes available. Instructions and training for operational staff needed to be clear and concise.

### **Question 8: Estimated proportion of passengers for whom carrier sends, or could send, API to e-Borders by 30 mins before departure**

Responses: Some airlines operate a business model that involves processing late passengers, including transfer passengers connecting from alliance and other commercial partners. Therefore they can not send majority of data at +30minutes.

Other airlines can process between 80% and 99.9% of passengers by – 30minutes. For many, 100% passenger data is not available until boarding.

### **Question 9: Estimated proportion of API carrier sends, or could send, by 60 minutes before departure**

Responses: The majority of carriers collect a large proportion of API before the 60 minute window. However, a mandate of complete data for all passengers at 60mins would have severe operational impacts, especially for transfer passengers (see above) and could not be supported.

### **Question 10: Sanctions regime and ‘reasonable excuse’ defence**

Responses: There was broad support for the ‘reasonable excuse’ defence: carriers should not be penalised if they have used their best endeavours. Most respondents thought that each case should be taken on its merit and the reason for any failure looked at on a case by case basis rather than drawing up a list of ‘excuses’.

One airline considered that having a sanction – an option of enforcement rather than an option of implementation – did not suit a ‘working in partnership’ approach to reduce the terrorism threat to the UK. Others felt that no sanctions should be applied in advance of more automation.

### **Question 11: Comments on draft text to be supplied to an airline in the event of a refusal of authority**

Responses: A number of respondents suggested revisions to the text to highlight the urgency of response required. It was also suggested that nationality and passport number be included. Others were content with wording but suggested that there may not always be time at all locations to prepare and print document. Further discussion with industry is required on this aspect.

### **Question 12: Authority to Carry terminology**

Responses: The term ‘authority to carry’ is widely understood but the majority of respondents felt the use of ‘no fly’ was preferable as it is more widely understood by overseas handling agents used to dealing with the US Secure Flight program. Further clarification is also needed to make clear that this is about ‘permission’ to carry rather than a requirement to carry.

### **Question 13: Process of implementing a denial of ATC, and action following the notice that authority to carry has been denied**

Responses: A number of airlines helpfully set out in detail the process they would use to effect a denial of authority to carry. It was widely agreed that the use of RALON network would be helpful. More clarity was sought on handling contingencies.

### **Question 14: Contact points for National Border Targeting Centre to notify denial of ATC**

Responses: These should be agreed with individual carriers. Most have 24/7 operation centres.

### **Question 15: Comments on an interactive API system**

Responses: The vast majority were very supportive of an interactive API system and urged Government to introduce more real-time automation at the earliest opportunity.

“If the purpose ... is to identify high risk individuals who present a terrorist threat and prevent them from boarding an aircraft ... a manual solution may be manageable in the short term. However ... [we] would urge the Home Office to develop an automated system that provides an immediate response as part of the check in process in order to minimise room for error and to best meet the goals of the consultation.”

“We support a move from manual to an interactive, automated system, where technically possible.”

“A manual system is never going to be as secure as an interactive system. Therefore, AEA would urge the Home Office to move as quickly as possible towards a fully interactive Authority to Carry System.”

“Manual processes are never as robust as technical solutions, there is always margin for error. Difficulties in communicating via email or telephone across a global network may mean that an aircraft departs before a passenger is located. This could all be avoided by introducing an interactive process at check in ... [We recommend] that an interactive API system is introduced as soon as possible.”

“Interactive API systems are becoming increasingly considered by States in recognition of border security and facilitation benefits. An automated response is not only immediate, reduces the risk or error but is more desirable to carriers as it offers an opportunity to handle a decision promptly.”

Two airlines were strongly against introducing a more automated system because of the enormous cost for airlines during a recession period.

#### **Question 16: General comments**

Responses: A number of respondents suggested that the definition of purpose and scope in the Scheme is contradictory and needed to be clarified.

Several respondents suggested that robust measures need to be available for the redress of false positives to ensure misidentified passengers are not inconvenienced during future travel.

There were several suggestions that the ATC scheme should be extended to rail and maritime sectors. This is our intention once we have full e-Borders coverage.

#### **Question 17 & 18: Equality Impact Assessment**

Responses: Respondents commented that the consultation Equality Impact Assessment was accurate and balanced. It reflects nature of the world today. It was also suggested that if the scheme were extended to crime it would balance any ethnicity concerns.

#### **Question 19: Comments on wording for a passenger affected by a denial of authority to carry**

Responses: This was generally thought to be a helpful document with a good basic explanation of the reason why a passenger had been denied boarding. However, information on redress should be clearer.

#### **Question 20: UKBA contact points to lodge queries or address any problems that have arisen**

Responses: Where genuine cases of misidentification arise, a proper government administered system should be available to address this issue. Where available, RALON should be involved.

#### **Question 21: Estimates of the length of delays and the cost to individuals**

Responses: It was widely thought that any delay and costs incurred to the passenger are beyond the remit of carrier responsibility and the carrier should not be expected to reimburse the passenger. Additionally the carrier should not incur the cost of flying passengers who were wrongly denied boarding.

#### **Question 22: Positive or negative effects on community relations.**

Response: Positive – “preventing an attack is always a good thing”.

#### **Question 23: If negative effects, how might these be best reduced or managed?**

No responses received to this question.

## **Question 24: Further comments**

Responses: Overall respondents considered that the Scheme integrates with the overall vision of a risk based approach to aviation security. It was suggested that the Government carry out a Post-Implementation Review.

### **IMPACT OF CONSULTATION UPON THE PROPOSALS**

The consultation exercise has had a direct impact on the development of the Authority to Carry Scheme and the Impact Assessment. The key changes are as follows:

#### **Clarity of purpose and scope**

Our policy intention is to identify persons who pose a terrorist threat either to an aircraft or to the UK and prevent them from travelling to or from the UK. While the Scheme relates only to journeys to the UK, separate arrangements will be put in place for outbound journeys. British nationals will also be dealt with under separate arrangements.

#### **Timing constraints**

We accept that timing for the manual scheme will be very tight. The Scheme now confirms that carriers will not be penalised where notification of a denial of Authority to Carry is received at less than 15 minutes before departure. Work to better ensure earlier submission of passenger data will be taken forward with carriers.

#### **Costs**

Costs for both manual and interactive systems have been revised and incorporated in the final Impact Assessment at Annex C. The regulatory process requires Government departments to specifically assess costs to UK. We accept there are costs and benefits to all airlines that fall within the scope of the scheme.

#### **Automation**

The manually operated Scheme is an interim measure until we can, working with industry, introduce a more interactive Scheme. Work has commenced to scope the introduction of a semi automated system from 2013. We are giving consideration to widening the scope of the Scheme to crime and immigration criteria when a more interactive solution is available.

#### **Post Implementation Review**

We will conduct a review of the operation of the Scheme 12 months after implementation. The Government are required to renew the Regulations after 7 years.

#### **Sanction**

The Regulations include a defence of “reasonable excuse”. A Code of Practice on the application of the civil penalty will be published alongside the Authority to carry Scheme.

#### **Carrier’s liability**

Regardless of the operation of the ATC Scheme, carriers will continue to be subject to their normal obligations for carrier’s liability and liable for detention and removal costs whenever any of their passengers is denied entry to the UK.

## **Redress**

We have considered introducing a government administered system for false positive cases but estimate that it would not be cost effective to do so for the number of ATC refusals envisaged. We are therefore following usual practice for those refused at the border. More information on this will be provided to carriers.

## **Contingencies**

Carriers will be provided with information on this aspect separately.

## **EU Free Movement Rights**

In compliance with EU law on the free movement of persons, the Scheme will only apply to EEA nationals and their accompanying/joining third country national family members travelling to the UK who (i) have been excluded or deported from the UK on grounds of public security; or (ii) are subject to an EU or UN travel ban.

## **NEXT STEPS**

Regulations are being laid before Parliament today. They are subject to debate in both Houses and will come into force following approval by both Houses. We will continue to work with the airline community on the implementation of the Scheme.

**HOME OFFICE**

**April 2012**

## ANNEX A: LIST OF RESPONDENTS

AEA  
Air Nippon  
Air Transat  
BA  
BATA  
BAR-UK  
BMI  
Brussels Airlines  
IATA  
Etihad Airways  
Liberty  
Qantas  
Ryanair  
SITA  
Thomson Airways  
Virgin Atlantic Airways  
Prof Clive Walker  
Simon Wright

## ANNEX B: RECORD OF STAKEHOLDER MEETINGS

Meeting	Date
BMI	5 January 2011
Virgin Atlantic Airways	11 January 2011
British Airways	14 January 2011
BAR-UK	22 March 2011
Association of European Airlines, SwissAir, Tui Travel	23 March 2011
Qantas	5 April 2011
Monarch, Thomas Cook	5 April 2011
EasyJet	7 April 2011
Jet2	26 April 2011
Ryanair	25 August 2011
Augmentiq, SITA	7 October 2011
IATA	4 November 2011
Air Transport Association of America	11 October 2011
Liberty	8 December 2011





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